

JURIDICAL ANALYSIS OF CREDITOR PROTECTION RELATED TO THE TRANSFER OF ASSETS IN THE BANKRUPTCY PROCESS BY THE DEBITOR

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Abstract: This research examines the issues related to legal protection for creditors caused by the debtor's actions of transferring their assets when bankruptcy is applied for, as well as the regulations within the Bankruptcy Law in order to provide a legal framework for creditors to collect their claims. The research approach used in this study is a statutory approach with a normative juridical research type. The sources of legal materials used are primary and secondary legal sources. The technique for collecting legal materials used is library research. The validity is established using theory triangulation and concept triangulation. The Bankruptcy Law essentially regulates situations where debtors transfer their assets when bankruptcy is applied for through a mechanism known as Actio Pauliana. However, the Actio Pauliana mechanism stipulated in Article 41 of the Bankruptcy Law still has several shortcomings, including: First, rejection due to differing perceptions among judges in identifying debtor's actions as fraudulent; Second, jurisdiction of the competent court to adjudicate Actio Pauliana claims; Third, minimal participation from parties such as customers, police, prosecution, or banking institutions due to a lack of understanding of the Bankruptcy Law. Thus, Actio Pauliana claims have not been able to provide sufficient protection for creditors. The existence of the Automatic Stay mechanism can be a solution for the Bankruptcy Law to prevent debtors from invoking the Actio Pauliana mechanism in attempting to transfer bankrupt assets. However, the Automatic Stay mechanism is not yet actively implemented in Indonesia and has only begun to be adopted in the proposed amendments to the Bankruptcy Law. The implementation of Automatic Stay can be a preventive measure by the Bankruptcy Law against the diminishing value of bankrupt assets when debtors transfer their wealth. Automatic Stay can provide legal protection for debtors as well as for creditors..

Keywords: Bankruptcy, Actio Pauliana, Automatic Stay

INTRODUCTION

The State of Indonesia has a set of regulations in the field of bankruptcy law contained in Law Number 37 of 2004. The existence of bankruptcy is caused by a problem with a debt agreement or that occurs between a debtor and a creditor. The agreement results in the emergence of rights and obligations between debtors and creditors in its implementation. If the debtor's debt obligations to creditors are not fulfilled, the debtor may be required to make payments with bankruptcy procedures. This is a form of application of a principle called *concursum creditorium* and is the basis or requirement for bankruptcy in Indonesia (Prasmana, 2019).

Currently, the country of Indonesia is facing a post-pandemic period due to the rampant spread of *Corona Virus Disease* (Covid-19) between 2020-2022. The provisions in the KPKPU Law that have been implemented in Indonesia for almost 14 years have become difficult to implement. Other than that. This causes bankruptcy to be used as an easy mechanism to bring down bankruptcy based on simple evidence with a mechanism that is irrelevant to the legal principle of freedom for judges to judge cases. This causes losses for creditors and debtors for the bankruptcy system in the KPKPU Law which still has weaknesses. One of them is for creditors, there needs to be protection in the event that bankruptcy assets are transferred by debtors. Therefore, a preventive effort is

needed that is able to produce a concrete and effective bankruptcy law system for the fulfillment of the rights of creditors from debtors who transfer their assets.

Until now, the Indonesian state provides legal protection to creditors in the event that debtors transfer bankruptcy assets only through the *Actio Pauliana* mechanism as contained in Article 1341 of the Civil Code (KUH Percivil) which was later adopted by the KPKPU Law listed in Article 41 paragraph (1). *Actio Pauliana* is the right owned by creditors to apply for cancellation of debtor's deeds where the debtor understands that his actions can cause losses to creditors. This right is given to creditors as a form of legal protection for debtor actions that cause losses to creditors (Lekasmana, 2021).

In this case, the *Automatic Stay* mechanism can be a step in providing solutions for the KPKPU Law to prevent debtors from transferring bankruptcy assets. Currently, *Automatic Stay* has been implemented in laws and regulations in several countries such as the United States and Canada. The United States states that the purpose of implementing *Automatic Stay* is to maximize going concern in the fair distribution of assets for all creditors. While the implementation of *Automatic Stay* in Canada aims to provide legal protection for creditors who want to ask for their property during the bankruptcy process. The reason the author raised the title is the need for an assessment of the problem of transfer of assets carried

out by debtors in bankruptcy. In addition, because no party has conducted a more detailed study on this matter.

The Problem Formulation to be studied in this paper is: 1). How problematic is *Actio Pauliana* as a legal remedy against the actions of debtors who transfer bankruptcy assets? 2). How is the settlement of debtors who transfer bankruptcy assets through *Automatic Stay* in other countries? 3). What is the urgency of *Automatic Stay* in Law Number 37 of 2004 as a preventive effort in overcoming debtors who transfer bankruptcy assets?

METHOD

Legal Research Methods

A normative type of research with a qualitative approach was used in this study. As for related to the source of legal material in writing this study, primary legal material is also secondary legal material. Literature Study is a technique for collecting legal materials in this study. Triangulation theory is also triangulation of concepts used as data validity in this paper.

Thinking Framework

The systematics of Indonesian bankruptcy law contained in the KPKPU Law and valid to this day is based on the monetary crisis that occurred in Indonesia in 1998. At that time many companies were cooperating with other countries. At that time, there was massive inflation so that inflation occurred. This has an impact on various companies having to go bankrupt

(bankruptcy). Therefore, a fast, effective, and efficient solution to laws and regulations is needed to solve the problems that occurred at that time. The following are the objectives of the establishment of the KPKPU Law: a. As a collective container in determining the rights possessed by the collector over the debtor's assets in the event that it is not enough to make payments. b. Guarantor of a balanced distribution of bankruptcy assets or called the *pari passu* principle. c. As a preventive measure so as not to cause losses to creditors due to the actions of the debtor. d. Provide protection against concurrent creditors. e. As an effort for creditors and debtors to restructure debtors' debts. f. As legal protection against debtors in good faith. In fulfilling the interests of the business world so that problems related to debt receivables become fast, effective, and fair, Law Number 37 of 2004 concerning Bankruptcy and PKPU is used. In this paper will use the theory of *Thomas H. Jackson's Bargain Creditors Theory* and the Theory of Legal Expediency (Lie. G., et.all, 2019).

Literature Review: Requirements for Application for Bankruptcy

Declaration

An application for bankruptcy must be granted if there is a simple fact or circumstance that the requirements in article 2 paragraph (1) regarding have been fulfilled based on the provisions of article 8 paragraph (4) of the Bankruptcy Law. Law No. 37 on Bankruptcy and Suspension of Debt

Payment has determined the conditions that must be met to be able to file a bankruptcy application against debtors. The conditions contained in the Bankruptcy Law so that a bankrupt debtor can be declared bankrupt include article 2 paragraph 1 of the Bankruptcy Law which reads: "Debtors who have 2 (two) or more creditors and do not pay in full at least one debt that is due and can be collected, is declared bankrupt by a decision of the competent court, either on his own application or on the application of one or more of his creditors". From this article, it can be said that companies that are unable to pay off debts to their creditors can be said to be bankrupt. If a debtor has only one creditor then he cannot be declared bankrupt because the creditor is entitled to the debtor's property and the debtor must divide his assets against creditors, in bankruptcy this is understandable because what actually happens is a general confiscation of the debtor's wealth followed by forced liquidation which will later be divided prorate against his creditors against the proceeds of the liquidation.

Article 2 paragraph (2) states that the prosecutor can submit a bankruptcy application for public interest; in article 2 paragraph (3) Bank Indonesia may apply for bankruptcy if the debtor is a Bank; Article 2 paragraph (4) states that the Capital Market Supervisory Agency can also file for bankruptcy if the debtors include securities companies, stock

exchanges, depository and settlement institutions and clearing and guarantee institutions; Article 2 paragraph (5) The Ministry of Finance is also one of the parties that has the authority to file a bankruptcy application provided that the debtor is a State-Owned Enterprise engaged in the public interest, Reinsurance Companies, and Pension Funds. Article 6 of the Bankruptcy Law explains the mechanism for applying for bankruptcy statements submitted to the commercial court.

A debt that has matured and can be collected gives a sign that the creditor has the right to prosecute the debtor in order to fulfill his obligations (debt payment). That a debt must come from a perfect engagement (there is *schuld* and *hafting* in it). Based on this, it can be seen that from a natural engagement (no *haftung*) can not be filed for bankruptcy. One example is debt that was born in the world of gambling. Although payment is due, it does not give creditors the right to demand payment and apply for bankruptcy of a debt from a gambling event.

Literature Review: Creditors in Insolvency

Bankruptcy law is a realization of article 1132 of the Civil Code, so it is expected that bankruptcy law can be a solution to the problem of debt receivables between debtors and creditors. In addition, having at least 2 creditors is a requirement that is philosophically attached to the birth of bankruptcy law. The creditor itself is a

person who has receivables that can be determined by the Law. Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment recognizes 3 creditors recognized in bankruptcy as stated in article 2 paragraph (1), including concurrent creditors, preferred creditors, and the last is separatist creditors. Creditors who have the desire to specifically file for bankruptcy but without these creditors lose material collateral rights are separatist creditors and preferred creditors. Further explanation related to the three creditors is as follows:

Article 1132 of the Civil Code regulates concurrent creditors and is often referred to as ordinary creditors who do not have privileges. Concurrent creditors are creditors who hold the principle of *pari passu and pro rata that is, in the event that their receivables are calculated based on the amount of their receivables and in repayment there is no precedence in the sense of having an equal position over repayment to debtors. Repayment of receivables from concurrent creditors is paid from the remainder on repayment of payments of separatist creditors and preferred creditors. The right of this concurrent creditor is the same as other creditors that the debtor's bankruptcy assets, both existing and those that will be owned later, after deducting payments to separatist creditors and preferred creditors will later be distributed professionally to these concurrent creditors (Princess. A, 2019).*

Preferred creditors are special

creditors because in this creditor law the nature of receivables gets repayment first and has a higher level when compared to other creditors. Article 1149 of the Civil Code regulates general creditors, and article 1139 of the Civil Code regulates special creditors.

Separatist creditors are often referred to as creditors holding property security rights. Article 1133 of the Civil Code states that this creditor must take precedence over concurrent creditors because they are creditors holding property security rights, in addition to article 1134 paragraph (2) states that liens and mortgages have a higher position than privileges. The guarantee law system in Indonesia itself recognizes 4 types of material guarantees including fiduciary guarantees, liens, liens, and mortgages (Kartini Muljati, 2004: 168). As stipulated in article 56 paragraph (1), the right of execution held by separatist creditors will be suspended for 90 days called the *stay* period, during which time asset verification and matching are carried out therefore under receivership.

Since the bankruptcy judgment is handed down in the Commercial Court, the debtor will lose the right to manage and control *the bankrupt boedel*, so it is clear that the bankruptcy decision will have consequences for the debtor and his assets. The debtor remains the owner of the property that has become boedel palit, but related to its management is the authority of the

supervisory judge and curator appointed from the commercial court. Balai Harta Warisan (BHP) can act as a curator if there is no proposal to appoint another curator. In the case of bankruptcy of the firm and the partnership (CV), it is the ally who will be sentenced to bankruptcy and not the partnership. All debts not paid by the alliance shall be the responsibility of the allies for the alliance. Complementary allies as management allies will be legally responsible for CVs that go bankrupt. Since the bankruptcy declaration decision was pronounced, the management and settlement of bankruptcy assets began to be carried out by the receivership based on the supervision of the supervisory judge, this was done in the interest of creditors and debtors and has been stated in article 69 paragraph (1) of the Bankruptcy Law.

Article 104 of the Bankruptcy Law states that even if bankruptcy is filed for cassation or receivership review, it can continue the business of debtors who are declared bankrupt, it must still be based on the approval of the temporary creditor committee. Bankruptcy does not directly make the company stop running operations, but the debtor only loses his right to take care of his own business and related to the management of the continuity of the debtor's business will be taken over by the receivership as the authorized party. Some of the benefits that will be obtained if the bankrupt debtor's business is continued are that the

profits obtained from the company will certainly increase the assets of the bankrupt debtor, debt owed by the bankrupt debtor is likely to be paid in full; A peace is possible. The settlement of the bankrupt assets that have been carried out by the receivership remains valid and binding on the debtor if the bankruptcy decision is canceled by the Supreme Court because there is an attempt at cassation or review if the settlement of the bankrupt assets is carried out before the decision. Bankruptcy costs incurred and receivership services will be determined by the Panel of Judges after the cancellation of the bankruptcy. The curator may request the chief justice to issue an order of execution related to the execution of the payment of bankruptcy fees and receivership fees. There is no remedy whatsoever to fight the insolvency fee settlement.

Legal Theory: *Thomas H. Jackson's Theory of Bargain Creditors*

This theory became the foundation that influenced the development of bankruptcy law. Thomas H. Jackson is the initiator of the formation of the *Creditors Bargain* theory in the 1980s. This theory is the answer to a condition called the *common pool*, which is a situation where bankruptcy assets are not enough to settle creditor payments because the debtor has obligations greater than the value of the property owned by him. According to him, efficiency in the management and settlement of

bankruptcy assets can be increased by increasing and accumulating the value of bankruptcy assets and creditor agreements to reduce the cost of bankruptcy cases. To achieve this, creditors can bargain with their interests (*creditor's bargaining*). The application of these efforts is intended to be the best effort made against bankruptcy assets (*the "best use" of the common pool*).

Automatic Stay in this case is one effective way to deal with *common pools*. Because, with the existence of *Automatic Stay* in bankruptcy law which is conceptualized to stop the implementation of creditors' priority rights when debtors are requested or apply for bankruptcy. Then with the existence of the *Normative Butner Principle* as a basis for concurrent creditors to get paid for separatist creditor guarantees after separatist and preferred creditors get paid. That way, separatist creditors in the case of still having collateral to reduce their receivable guarantees even though there is a period of freezing assets when the debtor enters the bankruptcy period.

Legal Theory: Theory of Legal Expediency

Initially, legal expediency was developed by Jeremy Bentham, whose theory is known as utilitarianism. It starts with the way of assessment carried out on a public policy that has an impact on parties from the moral side. Bentham found that the beneficial or detrimental outcome of a policy or action could be beneficial. When Bentham's statement is related to law, in this case the good or

bad of the law is measured by reference to the good or bad consequences of an application of the law. A law is judged good when the results of its application are goodness, greater happiness, and lack of suffering. Meanwhile, a law will be of bad value if its application results in injustice, loss, and even increased suffering. This theory has the principle of purpose and evaluation of the law. The purpose of the law in question is the greatest happiness for all people and the evaluation of the law applied with a reference point on the impact of the application of a law. By focusing on this, the law contains the substance of regulations aimed at creating state welfare (Anisa Septiana, 2019).

RESULT AND DISCUSSION

The problem of *actio pauliana* as a legal remedy against the actions of debtors who transfer bankruptcy assets

The practice of *Actio Pauliana* starting with the filing of a lawsuit until it is granted by a judge is not an easy thing to do. Although theoretically and normatively, the *Actio Pauliana* mechanism has been contained in the KPKPU Law. The reason is the evidentiary mechanism in *Actio Pauliana* and legal protection for third parties in a transaction carried out with debtors. Quoting the opinion of Andriani Nurdin as a former judge of the Central Jakarta District Court / Commercial Court who stated that based on data in the Central Jakarta Commercial Court from 1998 to 2004 that *Actio Pauliana's* case was not

widely submitted to the Commercial Court. There were only 6 *Actio Pauliana* cases and against these cases both in the first instance and at the cassation level and the review was entirely rejected. He argued that the refusal was due to differences in the judges' perceptions of the actions taken by the debtor whether it included fraud that led to losses for creditors so that an *Actio Pauliana* lawsuit could be filed. In addition, the issue of the implementation of *Actio Pauliana* also occurs against the jurisdiction of the judiciary authorized to examine and adjudicate *Actio Pauliana*'s application (Agung. S., 2020).

There are other causes that make the practice of *Actio Pauliana* constrained. Quoted from one of the theses compiled by Muhammad Ikhsan Binarso entitled "*Actio Pauliana* in Relation to the Responsibility of Curators in Bankruptcy Cases" explained that there are several other obstacles that occur in detecting the assets of bankrupt debtors, including the lack of participation of customers, police, prosecutors, or banks. This is due to the parties' lack of understanding of the KPKPU Law. One example is when a curator who experiences problems while carrying out his duties to access accounts belonging to bankrupt debtors, but the bank does not heed the actions of the curator on the grounds of bank secrets. This has an impact on the curator if the curator does not apply for blocking, then the curator will get a

reprimand from Bank Indonesia and face criminal sanctions.

Settlement of Debtors Who Transfer Bankruptcy Assets Through Automatic Stay in Other Countries

There are several countries that apply the concept of *Automatic Stay*. The United States is one of the countries that uses the concept of *Automatic Stay* in its bankruptcy law system. *Automatic Stay* provisions will apply automatically after formal or informal notification of bankruptcy filing. Thus, creditors must immediately stop collecting actions and imposing sanctions on debtors. In addition, all actions of creditors aimed at making claims for their receivables will be deemed void by the court after the entry into force of *Automatic Stay* (Lisna Adinda, 2020).

Furthermore, quoted from another article entitled "Bankruptcy and the coronavirus" compiled by David Skeel stated that when a debtor is filed for bankruptcy, *Automatic Stay* will apply. *Automatic Stay* prohibits creditors from taking action to collect debts of debtors and may also give rise to the possibility for debtors to delay payment of obligations prior to its bankruptcy. Several countries have implemented the concept of *Automatic Stay*. First, Puerto Rico established the Board of Trustees and Servicemembers Civil Relief Act of 2003. In practice, when *Automatic Stay* is in effect, consumers and their businesses can delay rent payments which has the potential to cripple mortgage payments. Second, the United States is one of the countries that first implemented an

automatic *stay* mechanism. Based on the US Bankruptcy Act, Chapter 11, Section 362, the application of *Automatic Stay* has an impact, namely the delay of any lawsuit or claim from the creditor before the bankruptcy application is examined by the court and other actions against the debtor's assets. Third, Canada is one of the countries that knows the *Automatic Stay* mechanism. In Canada, *Automatic Stay* is enforced from the moment the registration of a bankruptcy application, whether individual or legal entity, is carried out. This is intended to protect debtors from the actions of creditors who seek to obtain rights to their receivables during bankruptcy. The *Automatic Stay* provision in Canada will terminate several actions, namely: collection by creditors, petitions for lawsuits in court, legal proceedings against collections that have been running in court, and court decisions related to execution. In addition, the *Automatic Stay* mechanism aims to maximize the application of the principle of going concern and *pari passu pro rata*. *Automatic Stay* will apply since there is a bankruptcy application against a debtor. This aims to be a preventive effort against the efforts of creditors who want to take their receivables simultaneously. If this happens, the value of the debtor's assets will decrease and the *pari passu pro rata* principle cannot be implemented. So that the *Automatic Stay* provision provides protection for fellow creditors.

The Indonesian state until now has not applied the concept of

Automatic Stay in the legal system or rules in bankruptcy. The rise of debtors transferring bankruptcy assets deserves attention as a basis for upholding the principle of *pari passu pro rata* in bankruptcy law. The Indonesian state through the legislature is currently planning to make changes to the KPKPU Law by issuing an Academic Paper on the KPKPU Bill. *Automatic Stay* is a new mechanism contained in the Academic Paper of the KPKPU Bill to be adopted by the Indonesian state which previously the mechanism had been implemented by the United States and Puerto Rico. *Automatic Stay* in the Academic Manuscript which will be regulated in the KPKPU Bill aims to guarantee the debtor's bankruptcy assets so that they can be properly supervised. Not only as a preventive measure against the actions of debtors who transfer bankruptcy assets, but *Automatic Stay* can be a preventive effort against separatist creditors who commit fraud in using their privileges which can cause losses to other creditors, especially concurrent creditors (David, 2019).

The Urgency of *Automatic Stay* in Law Number 37 of 2004 as a Preventive Effort in Overcoming Debtors Who Transfer Bankruptcy Assets

The implementation of *Automatic Stay* which will be included in the KPKPU Bill also covers all creditors. This means that from the moment the bankruptcy application is registered in the commercial court, the bankruptcy assets will be suspended. The concept of

Automatic Stay will apply automatically when bankruptcy is registered. However, the concept of *Automatic Stay* cannot include the debtor's assets that are used for the debtor's daily needs. *Automatic Stay is only intended so that there is no transfer of assets such as: buying and selling, transfers, grants, etc.), after the debtor is declared bankrupt, Automatic Stay will turn into a general confiscation of all assets of the bankrupt debtor. Therefore, the following is the concept of Automatic Stay that will be adopted into the KPKPU Bill based on the NA of the KPKPU Bill, namely: 1. Include the norm provisions in Article 6 of the KPKPU Law that implements the Automatic Stay mechanism when a bankruptcy application is made, due to the law of Automatic Stay, exceptions to Automatic Stay, Automatic Stay period valid, application for appointment of Automatic Stay by the court. 2. Automatic Stay authorizes the debtor to take care of his property. Automatic Stay only prohibits debtors from transferring bankruptcy assets and creditors cannot take legal action against debtors' bankruptcy assets as long as Automatic Stay is valid. So that changes in substance will be made to Article 24 paragraph (1) of the new KPKPU Law. 3. Automatic Stay remains valid until the termination of the bankruptcy case before the bankruptcy decision and the revocation of the bankruptcy case. 4. Automatic Stay is valid from the moment the bankruptcy application is registered, and an electronic publication will be carried out when the debtor's*

bankruptcy is requested along with its legal consequences.

The sale of objects belonging to the debtor that is under execution can still be carried out after obtaining permission from the supervisory judge, so that the curator can continue the process of selling objects belonging to the debtor. The implementation of *Automatic Stay* will increase the optimization of objectives in the KPKPU Law as stated in the general explanation including the factors needed for bankruptcy regulation in Indonesia, namely: (1) avoid events between creditors who fight over debtors' assets, (2) to avoid the sale of wealth owned by those pledged to separatist creditors without looking at the interests of debtors or other creditors, and (3) to avoid fraudulent acts committed by creditors and debtors. These factors are related to the Creditor's Bargain theory where it is known that the purpose of bankruptcy is *apsti* to improve welfare. Thomas H. Jackson argued that bankruptcy was a step to implement the judge's ruling. In addition, he also argued that all creditors wanted equal priority over him in bankruptcy. Thus, this is the essence of bankruptcy law and as a form of legal protection for creditors (Gery, 2019).

The transfer of bankrupt assets by debtors is certainly a fairly complex problem. Thus, the plan to implement *Automatic Stay* can be the right step to provide legal protection to creditors. In addition, the application of *Automatic Stay* in this case will create legal

certainty for creditors and the KPKPU Law when debtors transfer their assets in bankruptcy proceedings. Because, the actions committed by the debtor have a detrimental impact on the creditors and until now *Actio Pauliana's* lawsuit has not been able to accommodate the event. *Automatic Stay* will apply after the bankruptcy application is granted by a panel of judges of the commercial court in accordance with the debtor's legal domicile. The implementation of *Automatic Stay* in this case can be a preventive effort from the KPKPU Law against the value of bankruptcy assets that are reduced when debtors transfer their assets.

CONCLUSIONS

Automatic Stay which is a deposit on the debtor's assets which begins to be applied since the bankruptcy application is registered with the commercial court. The *Automatic Stay* mechanism is an urgency to be implemented in the KPKPU Law. Thus, based on the plan to be carried out by the Indonesian government which will make changes to the KPKPU Law is a good step to optimize legal protection for debtors and creditors. This is because the *Actio Pauliana mechanism* until now has not been able to provide legal protection to creditors. Thus, this causes when the debtor is declared bankrupt, the debtor's wealth has been greatly reduced and the creditor cannot obtain the right to receivables in accordance with the nominal. *Automatic Stay* in the KPKPU Law of the Republic of Indonesia

will come into effect from the time the bankruptcy application is registered until the bankruptcy decision or bankruptcy revocation. *Automatic Stay* provisions also authorize debtors to still be able to manage their property and run their business (going concern). In addition, *Automatic Stay provisions* prohibit creditors from taking legal action against the debtor's property. The implementation of *Automatic Stay will improve the optimization of objectives in the KPKPU Law* Thus, *Automatic Stay can provide legal protection to debtors, but also to debtors* (Bryan, 2020).

The suggestion in this paper is for the Commercial Court to determine the curator to supervise transactions made by debtors in carrying out transactions every day during the *Automatic Stay*.

REFERENCE

- Anisah, S. (2009). Studi Komparasi terhadap Perlindungan Kepentingan Kreditor dan Debitor dalam Hukum Kepailitan. *Jurnal Hukum Ius Quia Iustum*.
- Araujo, A. P., Ferreira, R. V., & Funchal, B. (2012). The Brazilian bankruptcy law experience. *Journal of Corporate Finance*, 18(4), 994-1004.
- Berkovitch, E., Israel, R., & Zender, J. F. (1998). The design of bankruptcy law: A case for management bias in bankruptcy reorganizations. *Journal of*

- financial and quantitative analysis*, 33(4), 441-464.
- Berkovitch, E., & Israel, R. (1999). Optimal bankruptcy laws across different economic systems. *The review of financial studies*, 12(2), 347-377.
- Bryan, S.T.(2020). Bankruptcy law in perspective. *UCLA L. Rev.*,16, 21.
- Christy, E., Wilsen, W., & Rumaisa, D. (2020). Kepastian Hukum Hak Preferensi Pemegang Hak Tanggungan dalam Kasus Kepailitan. *Kanun Jurnal Ilmu Hukum*, 22(2), 323-344.
- David, S.E. (2019). Bankruptcy law. *Handbook of law and economics*, 1, 2153-2642.
- Fibriani, R. (2022). Tinjauan Hukum Kepailitan Koperasi Saat Gagal Bayar Pada Masa Pandemi Covid-19. *Jurnal Ius Constituendum*, 7(1), 87-101.
- Gery, H.J (2019). Fresh-Start Policy in Bankruptcy Law, *The. Harv. L. Rev.*, 75,
- Hariyadi, H. (2020). Restrukturisasi Utang sebagai Upaya Pencegahan Kepailitan pada Perseroan Terbatas. *SIGn Jurnal Hukum*, 1(2), 119-135.
- Hartono, D. T. (2016). *Perlindungan Hukum Kreditor Berdasarkan Undang-Undang Kepailitan* (Doctoral dissertation, Tadulako University).
- Irianto, C. (2015). Penerapan Asas Kelangsungan Usaha Dalam Penyelesaian Perkara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU). *Jurnal Hukum dan Peradilan*, 4(3), 399-418.
- Kamilah, A. (2021). Penerapan Prinsip *Actio Pauliana* Dalam Kepailitan Dan Perlindungan Hukumnya Terhadap Pembeli Yang Beritikad Baik. *Jurnal Hukum Mimbar Justitia*, 7(2), 160-176.
- Kornelis, Y., & Amboro, F. Y. P. (2020). Implementasi Restrukturisasi Dalam Prosesi Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Di Indonesia. *Jurnal Selat*, 7(2), 237-277.
- Lee, S. H., Yamakawa, Y., Peng, M. W., & Barney, J. B. (2011). How do bankruptcy laws affect entrepreneurship development around the world?. *Journal of Business Venturing*, 26(5), 505-520.
- Lekasmana, Dinarti (2021). Tanggung Jawa Direksi dalam Perusahaan yang Pailit.: *Jurnal Hukum*, 1(3), 102-225.
- Lie, G., Saly, J. N., Gunadi, A., & Tiray, A. M. (2019). Problematik UU No. 37 Tahun 2004 tentang Kepailitan dan PKPU terhadap bank sebagai Kreditor separatis. *Jurnal Bakti Masyarakat Indonesia*, 2(2).

- Lisna, Adinda. (2020). Kepastian Hukum Kepailitan Kepada Kreditor dalam kepailitan. *Journal of Universitas Indonesia*, 3(1).
- Mooney Jr, C. W. (2004). A normative theory of bankruptcy law: bankruptcy as (is) civil procedure. *Wash. & Lee L. Rev.*, 61, 931.
- Pratama, B. (2014). Kepailitan dalam Putusan Hakim Ditinjau dari Perspektif Hukum Formil dan Materil. *Jurnal Yudisial*, 7(2), 157-172.
- Prasmana, Anton. (2019). Kajian Hukum Kepailitan di Indonesia. *Jurnal Justisia*, 8(2).
- Rahmani, I. (2018). Perlindungan Hukum Kepada Pembeli Dalam Kepailitan Pengembang (Developer) Rumah Susun. *Jurnal Hukum Bisnis Bonum Commune*, 1(1), 73-88.
- Retnaningsih, S. (2018). Perlindungan Hukum Terhadap Debitor Pailit Individu Dalam Penyelesaian Perkara Kepailitan Di Indonesia. *ADHAPER: Jurnal Hukum Acara Perdata*, 3(1), 1-16.
- Roni, D., & Roni Pandiangan, S. H. (2022). Jurnal: Diskrepansi Sita Umum Kepailitan dengan Sita Pidana Dihubungkan dengan Pemberesan Harta Pailit yang Mengandung Unsur Pidana. *Jurnal Pendidikan dan Konseling*, 4(5), 4047-4060.
- Sidabutar, L. M. J. (2019). Hukum Kepailitan Dalam Eksekusi Harta Benda Korporasi Sebagai Pembayaran Uang Pengganti. *Integritas: Jurnal Antikorupsi*, 5(2), 75-86.
- Suggono, Bambang. *Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 1996), 112.
- Sukanto, Soerjono dan Mamuji, Sri. *Penelitian Hukum Normatif*, (Jakarta: Rajawali Press, 1985), 15.
- Tabb, C. J. (1995). The history of the bankruptcy laws in the United States. *Am. Bankr. Inst. L. Rev.*, 3, 5.
- Tirayo, A. M., & Halim, Y. (2019). Problematik Definisi Harta Pailit untuk Mencapai Kepastian Hukum dalam Pelaksanaan Kepailitan dan PKPU. *Jurnal Ilmiah Penegakan Hukum*, 6(2), 130-137.
- White, M. J. (2011). Corporate and personal bankruptcy law. *Annual Review of Law and Social Science*, 7, 139-164.
- Wijayanta, T. (2014). Asas kepastian hukum, keadilan dan kemanfaatan dalam kaitannya dengan putusan kepailitan pengadilan niaga. *Jurnal Dinamika Hukum*, 14(2), 216-226.



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